DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
4400 PGA Boulevard, Suite 500
Palm Beach Gardens, FL 33410

REPLY TO
ATTENTION OF

APR 2 8 2008

Palm Beach Gardens Regulatory Office
SAJ-2008-533(IP-MJW)
Modification-#1

Florida Inland Navigation District
c/o David Roach
1314 Marcinski Road
Jupiter, FL 33477

Dear Mr. Roach:

The U.S. Army Corps of Engineers has completed the review and evaluation of your modification request received April 28, 2008 in which you asked to modify Department of the Army permit number SAJ-2008-553(IP-MJW), for maintenance dredging approximately 16,000 feet of the Intracoastal Waterway (IWW) and depositing the sand on the shoreline between DEP monuments R-13 and R-19 (1.04 miles). The maintenance dredging project is located within the IWW in the vicinity of Jupiter Inlet, between cuts P-1 and P-4, (Section 23, Township 40 South, Range 43 East) Palm Beach County, Florida. The beach placement activity is located between FDEP monuments R-13 and R-19, Atlantic Ocean. Latitude: 26.944 West, Longitude: 80.071 North.

The proposed modification is to change the date construction activities must cease due to sea turtle nesting season from April 30, 2008 to May 10, 2008 as specified in special condition number 10 of SAJ-2008-533(IP-MJW). This extension only applies to the current 2008 calendar year and will not extend the date for future activities authorized by this permit. The impact of your proposal on navigation and the environment have been reviewed and found to be insignificant. The permit is hereby modified in accordance with your request. You should attach this letter to the permit. All other conditions of the permit remain in full force and effect.

In addition, the modification must be completed in accordance with the eight enclosed special conditions listed below, which are incorporated in, and made a part of the permit, listed as follows:

1) All construction activities will cease and equipment associated with the project will be removed by midnight May 10, 2008;

2) Work will be conducted 24 hours a day, 7 days a week;

3) Nighttime sea turtle monitoring must be performed;

4) All sea turtle nests within the project area will be marked and avoided if at all possible. If necessary, nests within the fill template shall be relocated by a qualified professional with a valid FWC Marine Turtle Permit as authorized in the May 25, 2007 biological opinion;

5) If the project will be conducted during the period from March 1 through May 10, 2008, permittee shall conduct daily early morning surveys for sea turtle nests must be conducted. In the event a sea turtle nest is excavated during construction activities, all work shall cease in that area immediately. The permittee responsible for egg relocation for the project notified so the eggs can be relocated as outlined in the May 25, 2007 biological opinion;

6) From May 1 through May 10, 2008 and November 1 through November 30, staging areas for construction equipment must be located off the beach to the maximum extent practicable. Night-time storage of construction equipment not in use must be off the beach to minimize disturbance to sea turtle nesting and hatching activities during this period. In addition, all construction pipes placed on the beach must be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of pipes must be off the beach to the maximum extent possible. Temporary storage of pipes on the beach must be in such a manner so as to impact the least amount of nesting habitat and must likewise not compromise the integrity of the dune systems (placement of pipes perpendicular to the shoreline is recommended as the method of storage);

7) From May 1 through May 10 and November 1 through November 30, all on-beach lighting associated with the project must be limited to the immediate area of active construction only and must be the minimal lighting necessary to comply with all safety requirements. Lighting on offshore or onshore equipment must be minimized through reduction, shielding, lowering, and appropriate placement of lights to avoid

excessive illumination of the water, while meeting all U.S. Coast Guard and Occupational Safety and Health Administration (OSHA) requirements. Shielded low pressure sodium vapor lights are recommended for lights on offshore equipment that cannot be eliminated, and for illumination of the nesting beach and nearshore waters. Light intensity of lighting plants must be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields must be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area; and

8) All terms and conditions as outlined by FWC and in the Service's May 25, 2007, biological opinion and email dated May 28, 2008, which is attached, must be fulfilled.

Should you have any questions regarding this letter, please contact Melody White by phone at 561-472-3508, by email at Melody.J.White@usace.army.mil, or in writing at the letter head address.

Thank you for your cooperation with our permit program. The Corps Jacksonville District Regulatory Division is committed to improving service to our customers. We strive to perform our duty in a friendly and timely manner while working to preserve our environment. We invite you to take a few minutes to visit the following link and complete our automated Customer Service Survey:

http://www.saj.usace.army.mil/permit/forms/customer_service.htm. Your input is appreciated - favorable or otherwise.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Sincerely,

Tori White
Chief, Palm Beach Gardens Section

Enclosure

Copies Furnished:

Con-Ops

CESAJ-RD-PE

FWS - Vero Beach, Jacksonville

White, Melody J SAJ

From: Jeffrey_Howe@fws.gov
Sent: Monday, April 28, 2008 11:23 AM
To: Oberlin, Leah A SAJ; Brooks, Catherine L SAJ
Cc: robbin.trindell@myfwc.com; jocelyn.karazsia@noaa.gov; Lizbeth.Childs@dep.state.fl.us; droach@aicw.org
Subject: Jupiter Inlet ICWW dredging and sand placement extension

Hello Leah and Catherine:

The Corps has requested an extension to May 10, 2008, to maintenance dredge the intracoastal waterway (ICWW) and conduct beach placement activities south of Jupiter Inlet, Palm Beach County, Florida. The Corps will dredge approximately 130,000 cubic yards of material from approximately 16,000 feet of the ICWW between Cuts P-1 and P-9. The beach compatible material will be graded using bulldozers along 5,500 feet of shoreline between Florida Department of Environmental Protection monuments R-13 and R-19. A biological opinion completed on May 25, 2007, provided authorization for a one-time maintenance and placement event for the project outlined above.

Based on our review of the 2007 biological opinion, discussions with the Corps and Florida Fish and Wildlife Conservation Commission (FWC), and review of present sea turtle nesting data for the project area, the Service authorizes the Corps to conduct the proposed ICWW maintenance dredging and beach placement activities through May 10, 2008, under the following guidelines:

1) All construction activities will cease and equipment associated with the project removed by midnight May 10, 2008;

2) Work will be conducted 24/7;

3) Nighttime sea turtle monitoring will be performed;

4) All sea turtle nests within the project area will be marked and avoided if at all possible. If necessary, nests within the fill template will be relocated by a qualified professional with a valid FWC Marine Turtle Permit as authorized in the May 25, 2007 biological opinion;

5) If the project will be conducted during the period from March 1 through May 10, daily early morning surveys for sea turtle nests must be conducted. In the event a sea turtle nest is excavated during construction activities, all work shall cease in that area immediately and the permitted person responsible for egg relocation for the project notified so the eggs can be relocated as outlined in the May 25, 2007 biological opinion;

6) From March 1 through May 10 and November 1 through November 30, staging areas for construction equipment must be located off the beach to the maximum extent practicable. Night-time storage of construction equipment not in use must be off the beach to minimize disturbance to sea turtle nesting and hatching activities during this period. In addition, all construction pipes placed on the beach must be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of pipes must be off the beach to the maximum extent possible. Temporary storage of pipes on the beach must be in such a manner so as to impact the least amount of nesting habitat and must likewise not compromise the integrity of the dune systems (placement of pipes perpendicular to the shoreline is recommended as the method of storage);

7) From March 1 through May 10 and November 1 through November 30, all on-beach lighting associated with the project must be limited to the immediate area of active construction only and must be the minimal lighting necessary to comply with all safety requirements. Lighting on offshore or onshore equipment must be minimized through reduction, shielding, lowering, and appropriate placement of lights to avoid excessive illumination of the water, while meeting all U.S. Coast Guard and Occupational Safety and Health Administration (OSHA) requirements. Shielded low pressure sodium vapor lights are

recommended for lights on offshore equipment that cannot be eliminated, and for illumination of the nesting beach and nearshore waters. Light intensity of lighting plants must be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields must be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area; and

8) All terms and conditions as outlined by FWC and in the Service's May 25, 2007, biological opinion will be fulfilled.

This authorization is for a one-time placement event. All future maintenance activities will require reinitiation of consultation with the Service, and a new biological opinion.

Jeff Howe
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960
(772) 562-3909 x.283
(772) 538-6789 - cellular

< ')))><{ < ')))><{ < ')))><{ < ')))><{

US Army Corps of Engineers.

MJW

4/28/2008

File # SAJ-2008-533(MOD-MJW)

Attachment 1 of 1 pg 2

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: FIND – David Roach		File Number: **SAJ-2008-553**	Date: APR 2 8 2008
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- *ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.*
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- *ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.*
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- *ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.*
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact: Project Manager as noted in letter	If you only have questions regarding the appeal process you may also contact: Stuart Santos 904-232-2018

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or agent.	Date:	Telephone number:

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 3/3/08

B. DISTRICT OFFICE, FILE NAME, AND NUMBER:RD-SP, Jupiter Inlet Dredge, SAJ-2008-533(IP-MJW)

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State:Florida County/parish/borough: Palm Beach County City: Jupiter
Center coordinates of site (lat/long in degree decimal format): Lat. 26.944° N. Long. 80.071° W.
Universal Transverse Mercator:
Name of nearest waterbody: Jupiter Inlet or Atlantic Ocean
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: ICW or Atlantic Ocean
Name of watershed or Hydrologic Unit Code (HUC): 03090202
☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: 3/3/08
☐ Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There Are *"navigable waters of the U.S."* within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☒ Waters subject to the ebb and flow of the tide.
☒ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: intracoastal waterway and Atlantic Ocean are subject to the ebb and flow of the tide and is navigable and used for the transporation of goods..

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There Are *"waters of the U.S."* within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   - ☒ TNWs, including territorial seas
   - ☐ Wetlands adjacent to TNWs
   - ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   - ☐ Non-RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   - ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   - ☐ Impoundments of jurisdictional waters
   - ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: 5500 linear feet: width (ft) and/or acres.
   Wetlands: acres.

   c. **Limits (boundaries) of jurisdiction** based on: Established by mean (average) high water
   Elevation of established OHWM (if known):

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain:

---

[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. **TNW**
   Identify TNW: **Atlantic Ocean and ICW.**

   Summarize rationale supporting determination: intracoastal waterway and Atlantic Ocean are subject to the ebb and flow of the tide and is navigable and used for the transporation of goods..

2. **Wetland adjacent to TNW**
   Summarize rationale supporting conclusion that wetland is "adjacent": mangrove wetlands are directly influenced by the tide..

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. **Characteristics of non-TNWs that flow directly or indirectly into TNW**

   (i) **General Area Conditions:**
   Watershed size: Pick List
   Drainage area: Pick List
   Average annual rainfall: inches
   Average annual snowfall: inches

   (ii) **Physical Characteristics:**
   (a) Relationship with TNW:
   ☐ Tributary flows directly into TNW.
   ☐ Tributary flows through Pick List tributaries before entering TNW.

   Project waters are Pick List river miles from TNW.
   Project waters are Pick List river miles from RPW.
   Project waters are Pick List aerial (straight) miles from TNW.
   Project waters are Pick List aerial (straight) miles from RPW.
   Project waters cross or serve as state boundaries. Explain:

   Identify flow route to TNW[5]:

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is:
- ☐ Natural
- ☐ Artificial (man-made). Explain: .
- ☐ Manipulated (man-altered). Explain: .

Tributary properties with respect to top of bank (estimate):
- Average width: feet
- Average depth: feet
- Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):
- ☐ Silts
- ☐ Sands
- ☐ Concrete
- ☐ Cobbles
- ☐ Gravel
- ☐ Muck
- ☐ Bedrock
- ☐ Vegetation. Type/% cover:
- ☐ Other. Explain: .

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: .
Presence of run/riffle/pool complexes. Explain: .
Tributary geometry: Pick List
Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List
Estimate average number of flow events in review area/year: Pick List
Describe flow regime: .
Other information on duration and volume: .

Surface flow is: Pick List. Characteristics: .

Subsurface flow: Pick List. Explain findings: .
- ☐ Dye (or other) test performed: .

Tributary has (check all that apply):
- ☐ Bed and banks
- ☐ OHWM[6] (check all indicators that apply):
  - ☐ clear, natural line impressed on the bank
  - ☐ changes in the character of soil
  - ☐ shelving
  - ☐ vegetation matted down, bent, or absent
  - ☐ leaf litter disturbed or washed away
  - ☐ sediment deposition
  - ☐ water staining
  - ☐ other (list):
  - ☐ the presence of litter and debris
  - ☐ destruction of terrestrial vegetation
  - ☐ the presence of wrack line
  - ☐ sediment sorting
  - ☐ scour
  - ☐ multiple observed or predicted flow events
  - ☐ abrupt change in plant community
- ☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
- ☒ High Tide Line indicated by:
  - ☐ oil or scum line along shore objects
  - ☐ fine shell or debris deposits (foreshore)
  - ☐ physical markings/characteristics
  - ☐ tidal gauges
  - ☐ other (list):
- ☒ Mean High Water Mark indicated by:
  - ☐ survey to available datum;
  - ☐ physical markings;
  - ☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: .
Identify specific pollutants, if known: .

---

[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**
- ☐ Riparian corridor. Characteristics (type, average width): .
- ☐ Wetland fringe. Characteristics: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: .

Wetland quality. Explain: .

Project wetlands cross or serve as state boundaries. Explain: .

(b) General Flow Relationship with Non-TNW:

Flow is: Pick List. Explain: .

Surface flow is: Pick List

Characteristics: .

Subsurface flow: Pick List. Explain findings: .

- ☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

- ☐ Directly abutting
- ☐ Not directly abutting
  - ☐ Discrete wetland hydrologic connection. Explain: .
  - ☐ Ecological connection. Explain: .
  - ☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are Pick List river miles from TNW.

Project waters are Pick List aerial (straight) miles from TNW.

Flow is from: Pick List.

Estimate approximate location of wetland as within the Pick List floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: .

Identify specific pollutants, if known: .

(iii) Biological Characteristics. Wetland supports (check all that apply):
- ☐ Riparian buffer. Characteristics (type, average width): .
- ☐ Vegetation type/percent cover. Explain: .
- ☐ Habitat for:
  - ☐ Federally Listed species. Explain findings: .
  - ☐ Fish/spawn areas. Explain findings: .
  - ☐ Other environmentally-sensitive species. Explain findings: .
  - ☐ Aquatic/wildlife diversity. Explain findings: .

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: Pick List

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)

Summarize overall biological, chemical and physical functions being performed: .

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☒ TNWs: 5500 linear feet width (ft), Or, acres.
   - ☒ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
   - ☒ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
- ☐ Tributary waters: linear feet width (ft).
- ☐ Other non-wetland waters: acres.
  - Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     - Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
   - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
   - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]**
- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: .
- ☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

---

[8] See Footnote # 3.

[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10] **Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.***

Provide estimates for jurisdictional waters in the review area (check all that apply):
- [x] Tributary waters: linear feet width (ft).
- [x] Other non-wetland waters: acres.
  - Identify type(s) of waters: .
- [x] Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):
- [x] If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- [x] Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - [ ] Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- [x] Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- [x] Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
- [x] Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- [x] Lakes/ponds: acres.
- [x] Other non-wetland waters: acres. List type of aquatic resource: .
- [x] Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
- [x] Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- [x] Lakes/ponds: acres.
- [x] Other non-wetland waters: acres. List type of aquatic resource: .
- [x] Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):
- [x] Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- [x] Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - [ ] Office concurs with data sheets/delineation report.
  - [ ] Office does not concur with data sheets/delineation report.
- [x] Data sheets prepared by the Corps: .
- [x] Corps navigable waters' study: .
- [x] U.S. Geological Survey Hydrologic Atlas: .
  - [ ] USGS NHD data.
  - [ ] USGS 8 and 12 digit HUC maps.
- [x] U.S. Geological Survey map(s). Cite scale & quad name: .
- [x] USDA Natural Resources Conservation Service Soil Survey. Citation: .
- [x] National wetlands inventory map(s). Cite name: .
- [x] State/Local wetland inventory map(s): .
- [x] FEMA/FIRM maps: .
- [x] 100-year Floodplain Elevation is: (National Geodectic Vertical Datum of 1929)
- [x] Photographs: [ ] Aerial (Name & Date): .
  - or [ ] Other (Name & Date): .
- [x] Previous determination(s). File no. and date of response letter: .
- [x] Applicable/supporting case law: .
- [x] Applicable/supporting scientific literature: .
- [x] Other information (please specify):Google earth, Civil Works public notice and Environmental assessment..

B. ADDITIONAL COMMENTS TO SUPPORT JD: .

Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

April 29, 2008

Florida Inland Navigation District
c/o David Roach, Executive Director
1314 Marcinski Road
Jupiter, FL 33477

Permit Modification No. 0262913-004-JN
Permit No. 0262913-001-JC, Palm Beach County
Jupiter AIWW Maintenance Dredging and Beach Fill Placement

Dear Mr. Roach:

Your request to modify Permit No. 0262913-001-JC has been received and reviewed by Department staff. The proposed permit modification is to extend the construction window by 10 days, through May 10, 2008.

The following information describes the project history from the time of original permit issuance, and the subjects directly related to the proposed modification. For additional background, please see the *Consolidated Notice of Intent to Issue* for Joint Coastal Permit (JCP) No. 0262913-001-JC, dated December 3, 2007, available at the Bureau website: http://bcs.dep.state.fl.us/env-prmt/palm_bch/issued/0262913_Jupiter_AIWW_Maintenance_Dredging/001-JC/Intent/

Background

On January 7, 2008, the Department issued Permit No. **0262913-001-JC** to the U.S. Army Corps of Engineers. The project is to maintenance dredge a portion of the Atlantic Intracoastal Waterway (AIWW) in the vicinity of Jupiter Inlet, from Cut P-1 through Cut P-4, to restore full navigation depth of the Federal navigation project. The maximum excavation depth of the channel dredging varies from 12 feet to 16 feet (MLW). These maximum depths include the design depth, advance maintenance and allowable overdepth. Cuts P-1 and P-2 are to be dredged to a maximum depth of -12 feet MLW, and Cuts P-3 and P-4 are to be dredged to a maximum depth of -16 feet MLW. Beach-quality sand that is dredged from the channel will be placed along 5,500 linear feet of beach, immediately south of Jupiter Inlet, between FDEP monuments R-13 and R-19.

On January 18, 2008, the Department issued Permit Modification No. **0262913-002-EM**, which was primarily to allow nighttime dredging, but prohibited the use of a clamshell dredge. During the initial maintenance event in 2008, approximately 140,000 cubic yards of sand will be dredged and the material will be placed within the Jupiter/Carlin Shore Protection Project fill template (Permit No. 0163093-001-JC). Approximately 25,000 cubic yards of the dredged material will be utilized for dune reconstruction between FDEP monuments R-13 and R-17 during the initial maintenance event of this permit.

Permit Modification No. **0262913-003-JN** transferred the permit and all responsibility for permit conditions from the U.S. Army Corps of Engineers, Jacksonville District, to the Florida Inland Navigation District.

Justification

The permit does not allow the placement of dredged material on the beach during the main part of the marine turtle nesting season (May 1 through October 31). However, unexpected shoaling within the dredge template and equipment malfunctions has caused delays in dredging. A ten day extension of the construction window would allow the contractor sufficient time to dredge the remaining material in Cut P1, relocate it onto the beach, and remove all associated equipment from the project area.

The specific conditions shall be revised as follows (~~strikethroughs~~ are deletions, <u>underlines</u> are additions):

12. **Marine Turtles**

<u>In 2008 only, the following conditions shall apply:</u>

<u>a. All construction activities shall cease and equipment associated with the project shall be removed from the marine turtle nesting beach by midnight May 10, 2008.</u>

<u>b. Sand placement activities may proceed from March 1 through May 10, 2008, provided that early morning surveys for sea turtle nests are conducted daily from March 1 through the end of the nesting season.</u>

<u>i. Nesting surveys and egg relocations shall only be conducted by personnel with prior experience and training in nesting survey and egg relocation procedures. Surveyors must have a valid FWC permit issued pursuant to Florida Administrative Code Rule 68E-1. Nesting surveys shall be conducted daily between sunrise and 9 a.m. The contractor shall not initiate work until daily notice has been received from the sea turtle permit</u>

holder that the morning survey has been completed. Surveys must be performed in such a manner so as to ensure that construction activity does not occur in any location prior to completion of the necessary sea turtle protection measures.

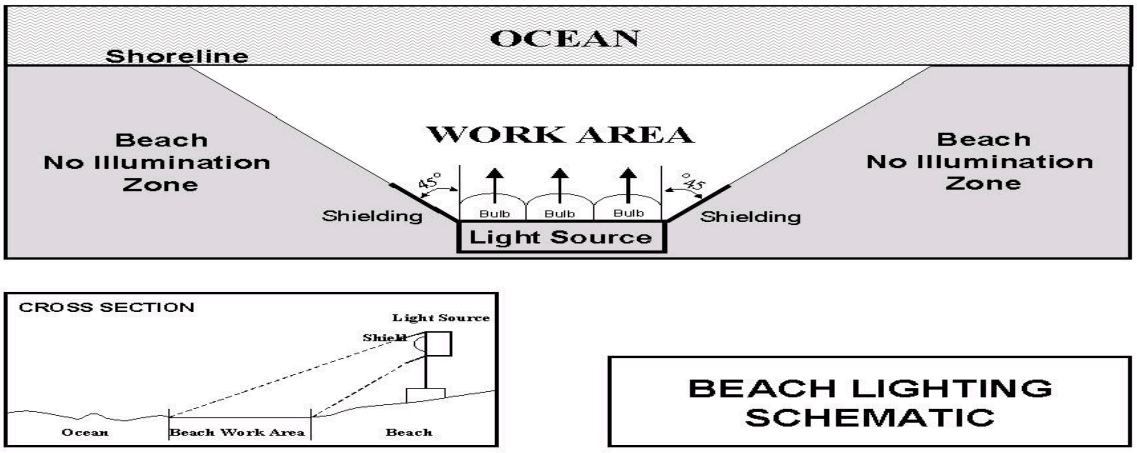
ii. Only those nests that may be affected by construction activities will be relocated. Nests requiring relocation must be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Relocated nests must not be placed in organized groupings; relocated nests must be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience severe erosion and egg loss, or that are subject to artificial lighting. Nest relocations in association with construction activities shall cease when sand placement activities no longer threaten nests.

iii. Nests deposited within areas where construction activities have ceased or will not occur for 65 days shall be marked and left *in situ* unless other factors threaten the success of the nest. The Marine Turtle Permit Holder shall install an on-beach marker at the nest site and/or a secondary marker at a point landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and highly visible survey ribbon or string shall be installed to establish a 10-foot radius around the nest while construction is ongoing. No activity shall occur within this area or shall any activities occur that could result in impacts to the nest. Nest sites shall be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the restoration activity.

iv. If beach nourishment will be conducted during the period from March 1 through May 11, 2008, daytime surveys for leatherback sea turtle nests shall be conducted beginning March 1. Nighttime surveys for leatherback sea turtles shall begin immediately and through May 11, 2008 or until completion of the project (whichever is earliest). Nesting surveys must be conducted nightly from 9 p.m. until 6 a.m. The project area must be surveyed at 1-hour intervals (since leatherbacks require at least 1.5 hours to complete nesting, this will ensure all nesting leatherbacks are encountered) and eggs must be relocated per the preceding requirements.

c. From March 1 through May 10 and from November 1 through November 30, direct lighting of the beach and nearshore waters must be limited to the immediate construction area and must comply with safety requirements. Lighting on

offshore or onshore equipment must be minimized through reduction, shielding, lowering, and appropriate placement to avoid excessive illumination of the waters surface and nesting beach while meeting all Coast Guard, EM 385-1-1, and OSHA requirements. Light intensity of lighting plants must be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields must be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area.



d. From March 1 through May 10, 2008 and November 1 through November 30, staging areas for construction equipment shall be located off the beach to the maximum extent practicable and no construction equipment shall be parked on the beach where it can hinder marine turtle nesting or hatchling emergence. In addition, all construction pipes that are placed on the beach shall be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of pipes on the beach shall be in such a manner so as to impact the least amount of nesting habitat and shall likewise not compromise the integrity of the dune systems.

In subsequent maintenance dredging events, the following conditions shall apply:

e ~~a~~. Beach placement shall be started after October 31 and be completed before May 1.

f ~~b~~. If sand will be placed on the beach during the period from March 1 through April 30, early morning surveys for sea turtle nests must be conducted daily from March 1 through April 30 or until completion of the project (whichever is earliest), and eggs must be relocated per the following requirements. If sand will be placed on the beach during the period from November 1 through November 30, daily early morning sea turtle nesting surveys must be conducted at least 65 days prior to project initiation and continue through September 30, and eggs must be relocated per the following requirements:

i. Nesting surveys and egg relocations will only be conducted by personnel with prior experience and training in nesting survey and egg relocation procedures. Surveyors must have a valid Florida Fish and Wildlife Conservation Commission (FWC) permit issued pursuant to Rule 68E-1, Florida Administrative Code. Nesting surveys must be conducted daily between sunrise and 9 a.m. The contractor shall not initiate work until daily notice has been received from the sea turtle permit holder that the morning survey has been completed. Surveys shall be performed in such a manner so as to ensure that construction activity does not occur in any location prior to completion of the necessary sea turtle protection measures.

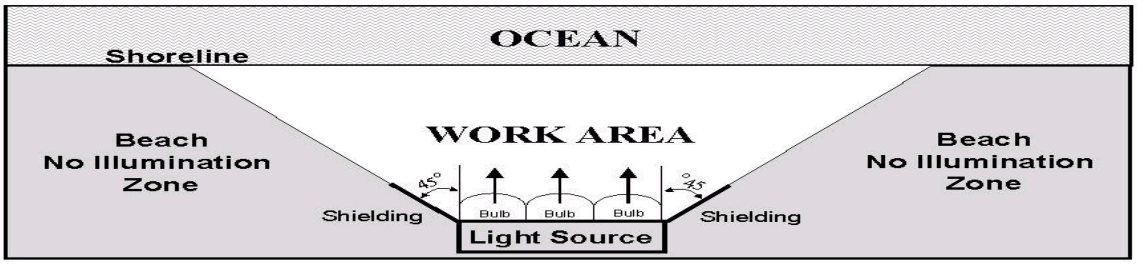
ii. Only those nests that may be affected by construction activities will be relocated. Nests requiring relocation must be moved no later than 9 a.m. the morning following deposition to a nearby self-release beach site in a secure setting where artificial lighting will not interfere with hatchling orientation. Relocated nests shall not be placed in organized groupings; relocated nests shall be randomly staggered along the length and width of the beach in settings that are not expected to experience daily inundation by high tides or known to routinely experience severe erosion and egg loss, or subject to artificial lighting. Nest relocations in association with construction activities must cease when construction activities no longer threaten nests.

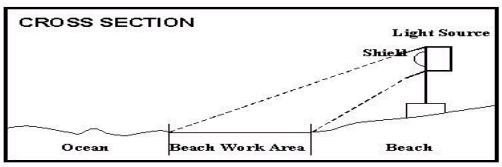
iii. Nests deposited within areas where construction activities have ceased or will not occur for 65 days must be marked and left *in situ* unless other factors threaten the success of the nest. The turtle permit holder shall install an on-beach marker at the nest site and/or a secondary marker at a point landward as possible to assure that future location of the nest will be possible should the on-beach marker be lost. A series of stakes and highly visible survey ribbon or string must be installed to establish a 10-foot radius around the nest. No activity will occur within this area or will any activities occur which could result in impacts to the nest. Nest sites must

be inspected daily to assure nest markers remain in place and the nest has not been disturbed by the restoration activity.

iv. If sand will be placed on the beach during the period from March 1 through April 30, daytime surveys for leatherback sea turtle nests must be conducted beginning March 1. Nighttime surveys for leatherback sea turtles will begin when the first leatherback crawl is documented within the project area and through April 30 or until completion of the project (whichever is earliest). Nesting surveys must be conducted nightly from 9 p.m. until 6 a.m. The project area must be surveyed at 1-hour intervals (since leatherbacks require at least 1.5 hours to complete nesting, this will ensure all nesting leatherbacks are encountered) and eggs must be relocated per the preceding requirements.

g e. From March 1 through April 30 and from November 1 through November 30, direct lighting of the beach and nearshore waters must be limited to the immediate construction area and must comply with safety requirements. Lighting on offshore or onshore equipment must be minimized through reduction, shielding, lowering, and appropriate placement to avoid excessive illumination of the waters surface and nesting beach while meeting all Coast Guard, EM 385-1-1, and OSHA requirements. Light intensity of lighting plants must be reduced to the minimum standard required by OSHA for General Construction areas, in order not to misdirect sea turtles. Shields must be affixed to the light housing and be large enough to block light from all lamps from being transmitted outside the construction area.





BEACH LIGHTING SCHEMATIC

h ~~d~~. From March 1 through April 30 and from November 1 through November 30, staging areas for construction equipment must be located off the beach to the maximum extent practicable. Nighttime storage of construction equipment not in use must be off the beach to minimize disturbance to sea turtle nesting and hatching activities. In addition, all construction pipes that are placed on the beach must be located as far landward as possible without compromising the integrity of the existing or reconstructed dune system. Temporary storage of pipes must be off the beach to the maximum extent possible. Temporary storage of pipes on the beach must be in such a manner to minimize the impact to nesting habitat and must not compromise the integrity of the dune systems.

In all maintenance dredging events, the following conditions shall apply:

i ~~e~~. Pipes placed parallel to the dune must be five to ten feet away from the toe of the dune.

j ~~f~~. Immediately after completion of the beach fill placement event and prior to March 1 for three subsequent years if placed sand still remains on the beach, the beach shall be tilled as described below or the permittee may follow the procedure outlined below to request a waiver of the tilling requirement. During tilling, at a minimum, the protocol provided below shall be followed:

i. The area shall be tilled to a minimum depth of 36 inches. All tilling activity must be completed prior to March 1.

ii. An annual summary of compaction surveys and the actions taken shall be submitted to the FWC.

iii. If the project is completed just before the nesting season, tilling shall not occur in areas where nests have been left in place or relocated unless authorized by the U.S. Fish and Wildlife Service in an Incidental Take Statement.

iv. This condition shall be evaluated annually and may be modified if necessary to address sand compaction problems identified during the previous year.

k ~~g~~. To request a waiver of the tilling requirement, the permittee may measure sand compaction in the area of restoration in accordance with a protocol agreed to by the FWC, the Department, the U.S. Fish & Wildlife Service, and the permittee to determine if tilling is necessary. The following protocol shall be followed:

i. Compaction sampling stations shall be located at 500-foot intervals along the project area. One station shall be at the seaward edge of the dune/bulkhead line (when material is placed in this area) and one station shall be midway between the dune line and the high water line (normal wrack line).

ii. At each station, the cone penetrometer shall be pushed to a depth of 6, 12, and 18 inches three times (three replicates). Material may be removed from the hole if necessary to ensure accurate readings of successive levels of sediment. The penetrometer may need to be reset between pushes, especially if sediment layering exists. Layers of highly compact material may lie over less compact layers. Replicates shall be located as close to each other as possible, without interacting with the previous hole and/or disturbed sediments.

iii. The three replicate compaction values for each depth shall be averaged to produce final values for each depth at each station. Reports shall include all 18 values for each transect line, and the final 6 averaged compaction values.

iv. If the average value for any depth exceeds 500 psi for any two or more adjacent stations, then that area shall be tilled prior to March 1. If values exceeding 500 psi are distributed throughout the project area but in no case do those values exist at two adjacent stations at the same depth, then consultation with the FWC shall be required to determine if tilling is required. If a few values exceeding 500 psi are present randomly within the project area, tilling shall not be required.

l ~~h~~. Visual surveys for escarpments along the beach fill area shall be made by the permittee immediately after completion of the beach placement project and prior to March 1 for the following three years if placed sand still remains on the beach. All scarps shall be leveled or the beach profile shall be reconfigured to minimize scarp formation. In addition, weekly surveys of the project area shall be conducted during the two nesting seasons following completion of fill placement as follows:

i. The number of escarpments and their location relative to DNR-DEP reference monuments shall be recorded during each weekly survey and reported relative to the length of the beach surveyed (e.g., 50% scarps). Notations on the height of these escarpments shall be included (0 to 2 feet, 2 to 4 feet, and 4 feet or higher), as well as the maximum height of all escarpments.

ii. Escarpments that interfere with sea turtle nesting or that exceed 18 inches in height for a distance of 100 feet shall be leveled to the natural beach contour by March 1. Any escarpment removal shall be reported relative to R-monument.

iii. If weekly surveys during the marine turtle nesting season document subsequent reformation of escarpments that exceed 18 inches in height for a distance of 100 feet, the FWC shall be contacted immediately to determine the appropriate action to be taken. Upon written notification, the permittee shall level escarpments in accordance with mechanical methods prescribed by the FWC.

m ~~i~~. The permittee must complete a survey of artificial beachfront lighting by May 15 and document all lighting visible from the filled beach, using standard techniques for such a survey. For each light not in compliance with the lighting ordinance adopted by the county or municipality, the permittee must provide documentation that the property owner(s) has been notified of the problem light with recommendations for correcting the light. Recommendations must be in accordance with the county's or municipalities' specific lighting ordinance. A summary report of the survey and documentation of property owner notification must be submitted to FWC by June 1 of that nesting season. Additional lighting surveys must be conducted by June 15, July 15, August 15, and September 15 of that nesting season and results reported by the 1st of the following month; and a final summary report provided by December 15 of that year.

n ~~j~~. The applicant shall arrange a meeting between representatives of the contractor, the Department, the FWC, and the permitted person responsible for marine turtle nest monitoring at least 30 days prior to the commencement of work on this project. At least 15 days advance notice shall be provided prior to conducting this meeting. This will provide an opportunity for explanation and/or clarification of the sea turtle protection measures. This meeting may be held in conjunction with the pre-construction conference specified under Specific Condition 2, provided that the timelines specified under this Specific Condition are met.

o ~~k~~. Reports on all nesting activity shall be provided for the initial nesting season and for a minimum of three additional nesting seasons. Monitoring of nesting activity in the seasons following construction shall include daily surveys and any additional measures authorized by the FWC. Reports submitted shall include daily report sheets noting all activity, nesting success rates, hatching success of all relocated nests, hatching success of a representative sampling of nests left in place (if any), dates of construction and names of all personnel involved in nest surveys and relocation activities. Data should be reported separately for the filled areas and for an equal length of adjacent beach that is not filled in accordance with the

attached Table. Summaries of nesting activity shall be submitted in electronic format (Excel spreadsheets). All reports should submitted by January 15 of the following year.

p ~~l~~. In the event a sea turtle nest is excavated during construction activities, all work shall cease in that area immediately and the permitted person responsible for egg relocation for the project should be notified so the eggs can be moved to a suitable relocation site.

q ~~m~~. Upon locating a dead, injured, or sick endangered or threatened sea turtle specimen, initial notification must be made to the FWC at 1-888-404-FWCC. Care should be taken in handling sick or injured specimens to ensure effective treatment and care and in handling dead specimens to preserve biological materials in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered or threatened species or preservation of biological materials from a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

After thorough review of your application, staff finds that the proposed modification is not expected to adversely affect water quality and the project is expected to remain clearly in the public interest. Staff has also determined that the proposed alteration does not increase the potential for adverse impact on the coastal system, public beach access seaward of the mean high water line or nesting sea turtles and hatchlings and their habitat, and that the proposed alteration does not reduce the design adequacy of the project. Since the proposed modification is not expected to result in any adverse environmental impact or water quality degradation, the **permit is hereby modified** as stated above. By copy of this letter, we are notifying all necessary parties of the modification.

This letter of approval does not alter the **January 6, 2018** expiration date, other Specific or General Conditions, or monitoring requirements of the permit. This letter must be attached to the original permit.

This permit is hereby modified unless a sufficient petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, Florida Statutes, as provided below. The procedures for petitioning for a hearing are set forth below. Mediation under Section 120.573, F.S., is not available for this proceeding.

NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. The petition must

contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in further modification of the permit or even a denial of the application. If a sufficient petition for an administrative hearing or request for an extension of time to file a petition is timely filed, this permit modification automatically becomes only proposed agency action on the application subject to the result of the administrative review process. Accordingly, the applicant is advised not to commence construction or other activities under this permit modification until the deadlines noted below for filing a petition for an administrative hearing or request for an extension of time has expired.

Under Rule 62-110.106(4), Florida Administrative Code, a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon. If a request is filed late, the Department may still grant it upon a motion by the requesting party showing that the failure to file a request for an extension of time before the deadline was the result of excusable neglect.

In the event that a timely and sufficient petition for an administrative hearing is filed, other persons whose substantial interests will be affected by the outcome of the administrative process have the right to petition to intervene in the proceeding. Any intervention will be only at the discretion of the presiding judge upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant must be filed within 14 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 14 days of publication of the notice or within 14 days of receipt of the written notice, whichever occurs first.

Under Section 120.60(3), F.S., however, any person who has asked the Department for notice of agency action may file a petition within 14 days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition for an administrative hearing within

the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S.

In accordance with Rule 28-106.201, F.A.C., a petition that disputes the material facts on which the Department's action is based must contain the following information:

(a) The name and address of each agency affected and each agency's file or identification number, if known;
(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
(c) A statement of when and how the petitioner received notice of the agency decision;
(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
(e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
(g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C. Under Sections 120.569(2)(c) and (d), F.S., a petition for administrative hearing must be dismissed by the agency if the petition does not substantially comply with the above requirements or is untimely filed.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

This permit modification constitutes an order of the Department. The applicant has the right to seek judicial review of the order under Section 120.68, F.S., by the filing of a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000; and by filing a copy of the notice of appeal accompanied by the applicable

filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days from the date when the final order is filed with the Clerk of the Department.

When there has been no publication of notice of agency action or notice of proposed agency action as prescribed in Rule 62-110.106, F.A.C., a person may request a copy of the agency action. The Department shall upon receipt of such a request, if agency action has occurred, promptly provide the person with notice. The Department does not require notice of this agency action to be published. However, the applicant may elect to publish notice as prescribed in Rule 62-110.106, F.A.C., which constitutes notice to the public and establishes a time period for submittal of any petition.

If you have any questions regarding this matter, please contact me at the letterhead address (add Mail Station 300) or by telephone at (850) 414-7728.

Sincerely,

Martin K. Seeling
Environmental Administrator
Bureau of Beaches & Coastal Systems

MKS/cl

cc: Robbin Trindell, FWC, ISMS
Mary Duncan, FWC, ISMS
Jeffrey Howe, USFWS
Martin Seeling, BBCS, JCP
El Kromhout, BBCS, CE
JCP Compliance Officer
BBCS File
Tony Maguire, Taylor Engineering, Inc.
Lauren Herren, CAMA, South Indian River Aquatic Preserves
Jennifer Smith, DEP, Southeast District
Daniel Bates, PBC DERM
Robert Brantly, BBCS, CE
Mark Taynton, BBCS, CCCL

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.

Matthew W. Nash 4-29-2008
Deputy Clerk Date